

Workforce Innovation and Opportunity Act (WIOA) Webinar
Questions and Answers
8-25-16

Q#1 - Are Missouri Extended Employment Sheltered Workshops Closing?

- A. *Section 511 of Workforce Innovation and Opportunity Act (WIOA) does not eliminate sheltered workshops and it does not eliminate subminimum wage under section 14(c) of the Fair Labor Standards Act (FLSA). The Missouri Model is and will continue to be available as an informed choice for individuals seeking employment.*

Q#2 - Will I have to wait till I'm 25 to become employed in a workshop?

- A. *WIOA does not take away the individual's choice of subminimum wage employment in a workshop. However, the law and its implementing regulations require that before a workshop may employ a youth with disability aged 14-24 at subminimum wage, the youth must complete certain service-related activities and produce documentation showing completion of those activities (section 7(42) of the ACT and 361.5(c)(58)). If a youth completes the required activities and receives documentation from Vocational Rehabilitation (VR) that they cannot benefit from competitive, integrated employment, the youth may apply for subminimum wage employment, even if they are under the age of 25. If a youth with a disability or the youth's parent or guardian, refuses, through informed choice, to participate in the required activities, the individual will not be able to apply for work at subminimum wage in a workshop until after they reach the age of 25.*

Q#3 - We have students in a work study program working in the high school cafeteria. They get paid \$2/hour, get high school credit and a free lunch. Can the school continue to pay students in this type of on-campus program at sub-minimum wage?

- A. *The school should either pay minimum wage or set it up as a non-paid work experience. Language in the regulations support the importance of wages paid to the individual with a disability that are commensurate with the same wages paid to individuals without disabilities for that same job. We believe these regulations would also apply to a school based work study program, even if the work experience is only for pre-employment or transition-related services. Only those entities that hold a 14(c) special certificate are authorized through Department of Labor (DOL) to pay individuals subminimum wages.*

Q#4 - Can we continue our off campus unpaid work-experience program with businesses in the community to allow students to try different jobs (for various lengths of time) over the course of the year to get general training as part of our vocational skills training classes?

- A. *Yes. Per the DOL these types of unpaid work experiences for individuals with disabilities are permitted for a short period of time at a business, when the purpose of the work experience is for job exploration, assessment, or training, as long as certain criteria are met. Local Education Agencies (LEAs) are encouraged to review the guidance outlined in the State Employment Leadership Network (SELN) document (posted as a webinar resource on the Office of Special Education website) entitled "Unpaid Work Experiences, Volunteering, and Internships: What's Allowed" for a complete listing of all the criteria that must be met when developing on or off campus unpaid work study or work experience programs for students with disabilities.*

Q#5 - What if work experience is in a voluntary work setting only, such as an animal shelter, Habitat for Humanity, etc.?

- A. *Students can work as a volunteer, as long as certain criteria are met. Individuals may volunteer only at non-profit organizations. Volunteering is not permitted at for-profit, private-sector businesses.*

Per the DOL, individuals may volunteer or donate their services for “public service, religious or humanitarian objectives” without expectation or receipt of payment. An individual with a disability must be legally competent to freely volunteer his or her services. Per the DOL, individuals under 18, and those over 18 who are not their own legal guardian, cannot volunteer without the consent of their parent or legal guardian. For more detailed information, we encourage LEAs to review the SELN document referenced in the above question.

Q#6 - Is the documentation of the Pre-Employment Transition Services (Pre-ETS) 1 or 2 experiences, and how does a VR counselor document these services?

- A. *As we stated in the first webinar, there are five pre-employment transition service activities that the VR Counselor or the Hook Center Pre-ETS Specialist may be able to provide to students with disabilities who are eligible or potentially eligible for VR services, and those are:*
- 1. Job exploration counseling;*
 - 2. Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment to the maximum extent possible;*
 - 3. Counseling on opportunities for enrollment in comprehensive transition or post-secondary educational programs at institutions of higher education;*
 - 4. Workplace readiness training to develop social skills and independent living; and,*
 - 5. Instruction in self-advocacy, which may include peer mentoring.*

There is no requirement in the law or the regulations that specify the number of work based learning experiences that should be provided. This should be individualized, based upon each student’s skills, abilities, and interests, in accordance with their unique needs/challenges; and determined by the IEP team, in partnership with the student, parent/guardian, and the VR counselor or Hook Center Pre-ETS Specialist, as appropriate.

Pre-employment transition services should be done in collaboration with the LEA and in coordination with other transition-related services outlined in the student’s Individualized Education Program (IEP). Therefore, some of the documentation of pre-employment transition services may be provided by the Hook Center, the school district, and/or the vocational rehabilitation counselor depending on who is providing the service. These services and activities may be documented in student work experience progress reports or through documentation of pre-employment transition service activities done by the Hook Center Pre-ETS Specialist or the VR Counselor.

Q#7 – One of the slides in the previous webinar said 24 years of age and younger was the targeted age, but school age ends at 21 and that seems contradictory. Can you please clarify the age range?

- A. *These are the age ranges addressed within the WIOA.*
- o A student with a disability (section 7(37) of the Act and §361.5(c)(51)) is defined as an individual who is in an educational program; and is 16-21 years of age (this is determined by each state based on the age range transition services are provided under IDEA); and is eligible for and receiving special education or related services under IDEA; or is an individual with a disability for purposes of section 504 of the Act.*

- *A youth with a disability (section 7(42) of the Act and 361.5(c)(58)) is defined as an individual not younger than 14 years of age and not older than 24 years of age.*
- *A student with a disability also meets the definition of a youth with a disability. However, a youth with a disability may not always meet the definition of a student with a disability.*

Q#8 – Do pre-employment transition services for “potentially eligible” students apply only to children with disabilities under IDEA who have an IEP, or could they meet 504 requirements?

- A.** *Yes, they can also meet 504 requirements. Pre-employment transition services are provided to those individuals who meet the definition of a “student with a disability,” which includes students who are eligible for and receiving special education or related services under IDEA; or students with a disability for the purposes of Section 504. The student does not actually have to be receiving 504 services, or be on a 504 plan, just eligible for 504 services.*

Q#9 - Can a student who already has an open case with VR and has already been certified by DESE, choose to go to the sheltered workshop after they have completed a D&E (discovery and exploration) through a CRP (community rehabilitation provider), if they have not yet started working at the workshop?

- A.** *Students who have not yet graduated or exited high school (even students who may have already been certified and were placed in a sheltered workshop as part of their vocational training/post-secondary transition prior to July 22, 2016) will not be able to work for subminimum wages in a sheltered workshop.*

Section 511(b)(2) of the Act and 397.31 prohibits the LEA from entering into a contract, or other arrangement, with an entity that holds a special wage certificate under section 14(c) of the Fair Labor Standards Act (FLSA) for the purpose of operating a program for a youth under which work is compensated at a subminimum wage.

Q#10 – If a student participates in a summer work experience through VR as a junior, and the CRP does not recommend competitive employment, can they go to the sheltered workshop their senior year?

- A.** *The individual cannot attend the sheltered workshop while they are still a student during their senior year if they are going to be paid subminimum wage.*

The CRP may make a recommendation regarding the student’s performance during the summer work experience program, however, it is the VR counselor that will make the final determination of whether or not the individual can benefit in terms of competitive, integrated employment. The VR counselor will make this determination after reviewing all of the information available regarding the student’s participation in pre-employment transition services and transition services provided through the IEP.

Prior to making this determination, the VR counselor will most likely continue to work with the student on pre-employment transition services throughout the student’s final year of school, to include specific areas that may have been identified during the summer work experience program; and the LEA will continue to provide transition-related services/activities in accordance with the goals and objectives listed in the student’s IEP. The VR counselor and the LEA will coordinate the provision of continued pre-employment transition services through the

Individualized Plan for Employment (IPE) and transition services provided through the IEP throughout the remainder of the student's final year.

Q#11 - When you say a child with a disability, do you mean a child with a disability or do you mean a child who meets IDEA requirements?

- A.** *The Individuals with Disabilities Education Act (IDEA) defines students with disabilities as those children, ages three (3) to twenty-one (21), who have been properly evaluated as having Intellectual Disability, Hearing Impairments and Deafness, Speech or Language Impairments, Visual Impairments including Blindness, Emotional Disturbance, Orthopedic Impairments, Autism, Traumatic Brain Injury, Other Health Impaired, a Specific Learning Disability, Deaf Blindness, or Multiple Disabilities and, who because of that disability, require special education and related services.*

The WIOA also applies to people who have a disability as defined by Section 504 of the Rehabilitation Act. Under Section 504, a student must be determined to have a physical or mental impairment that substantially limits one or more major life activities, or to have a record of such an impairment, or be regarded as having such an impairment. Major life activities, as defined in the Section 504 regulations include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive.

Q#12 – What are the minimum requirements to meet pre-employment transition services in high school, and how is this documented?

- A.** *There are no minimum requirements for pre-employment transition services. Pre-employment transition services are available statewide to all individuals who meet the definition of a "student with a disability" in need of such services, regardless of whether a student has applied for VR services; and may begin once a student requests or is recommended for one or more pre-employment transition services and documentation of a disability is provided to the VR agency [or Hook Center Pre-ETS Specialist].*

In accordance with all applicable confidentiality requirements, VR and the Hook Center Pre-ETS Specialists, in partnership with the LEAs will maintain appropriate documentation of those individual students who have received pre-employment transition services. Any documentation provided by the LEA to VR must comply with the confidentiality requirements of the Family Education Rights and Privacy Act (FERPA), and must retain copies of the documentation in a manner consistent with the requirements of 2 CFR 200.333.

Q#13 – Who is auditing agent for VR to ensure they have provided the "required documentation"?

- A.** *At the federal level, the Rehabilitation Services Administration (RSA) monitors state VR agencies for compliance with the law and implementing regulations. In Missouri, the state VR agency has a Quality Assurance Section that reviews and monitors counselor's individual casework and office practices to ensure quality services are provided to individuals with disabilities.*

Q#14 - What are examples of "certain requirements" the youth must complete?

- A.** *Before a workshop or any other entity may begin compensating a youth with a disability at subminimum wage, the youth must complete certain service-related activities and produce documentation showing completion of those activities (section 511(a)(2) of the Act and 397.20*

and 397.30 of the implementing regulations). These requirements include documentation of the following:

- Receipt of pre-employment transition services provided by either the VR counselor or the Hook Center Pre-ETS specialist; or transition services provided by the LEA under IDEA; and
- Application for VR services that result in the determination of either ineligibility or eligibility.

If the youth was determined eligible for the VR program, he or she must have:

- An approved IPE;
- Been working toward an employment outcome in the IPE, for a reasonable period of time and with appropriate supports without success;
- A closed VR case; and
- Receipt of career counseling, and information and referral services.

Q#15 – Who should parents/guardians contact if the individual is 24 or younger, wants to work in a sheltered workshop, and they have already graduated/exited high school?

- A. Parents/Guardians may contact their sheltered workshop, who will refer them to the local VR office. They may also contact the local VR office directly.

Q#16 – If a student who is in their final year of high school is seeking subminimum wage employment at a sheltered workshop after they exit high school, who do they contact and when?

- A. Since services are individualized to meet the needs of the student, please talk to the VR counselor who serves your school to discuss the best time to make the referral. Either the VR counselor or a Competitive Employment Evaluator (CEE) will make arrangements to meet with the student and parent/guardian to open the case and work with the student to determine whether they can benefit from employment in a competitive integrated setting. Timing of the referral may vary, but may occur as late as the second semester of their last year in school to enable the student to benefit from receipt of pre-employment transition services and/or transition services in the IEP for as long as possible.

Q#17 – Can a sheltered workshop continue to employ a student at subminimum wage if they were employed prior to July 22, 2016, are age 17, home-schooled, and not currently receiving any services from the LEA?

- A. Once a student turns 17, compulsory attendance no longer applies to that individual. Therefore, even if a 17 year old continues to be home-schooled, it is our understanding the student is eligible to remain employed at a subminimum wage in the workshop. Neither Missouri law nor regulation addresses home-school graduation requirements, so essentially that is up to the parent/guardian.

Q#18 – Should work-based learning experiences occur in competitive, integrated settings only?

- A. Work-based learning experiences should occur in integrated settings to the maximum extent possible. All opportunities for work-based learning experiences in competitive integrated employment settings should be exhausted before considering provision of these services in non-integrated work settings. Actual work experiences integrated settings, rather than simulated or mock experiences in sheltered environments, provide students with disabilities with the most beneficial opportunities for job exploration, work-based learning, work readiness, and peer mentoring.

Q#19 – What documentation do school districts need to provide to VR about transition services for students seeking sheltered employment?

- A. School districts will need to provide VR documentation of the disability (Evaluation Report), the Individualized Education Program (IEP) and documentation of the results of transition services addressed in Form C of the IEP.*